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JUN 24 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

June 4, 1997

**EX PARTE FILING**

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: **Expedited Reconsideration of Interpretation of Section  
272(e)(4), CC Docket No. 96-149**

Dear Mr. Caton:

I enclose for filing in this proceeding an original and one copy of a memorandum summarizing the substance of an ex parte presentation made on June 3, 1997, to Christopher Wright, John Ingle, and Debra Weiner of the General Counsel's Office, and David Ellen of the Common Carrier Bureau. The presentation was made by Michael Kellogg and Mark Evans of Kellogg, Huber, Hansen, Todd & Evans, speaking on behalf of the Bell Atlantic Telephone Companies, Bell Atlantic Communications, Inc., BellSouth Corporation, NYNEX Corporation, Pacific Bell, Nevada Bell, SBC Communications Inc., and Southwestern Bell Telephone Company. Also in attendance was Michael Glover of Bell Atlantic.

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Mr. William F. Caton

June 4, 1997

Page 2

Copies of the materials provided during the meeting are attached to the enclosed memorandum.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark L. Evans', with a long horizontal flourish extending to the right.

Mark L. Evans  
Counsel for Bell Companies

cc: Christopher Wright  
John Ingle  
Debra Weiner  
David Ellen

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**EXPEDITED RECONSIDERATION OF INTERPRETATION**  
**OF SECTION 272(e) (4)**

**JUN 24 1997**

**CC Docket No. 96-149**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

The provision ultimately enacted as new section 272(e) (4) originated in the 103d Congress. It appeared as section 236(f) (3) (D) in S. 1822, as reported by the Senate Committee on Commerce, Science, and Transportation in S. Rep. No. 103-367, 103d Cong., 2d Sess. (1994). As the attached materials reflect, the Committee staff, in meetings with the RBOC MFJ Task Force, had proposed adding a provision to the bill requiring an RBOC to offer interLATA services through a separate subsidiary. In a letter dated August 4, 1994, the Chairman of the Task Force advised Senators Hollings and Danforth that:

The RBOCs can agree to a separate subsidiary if that subsidiary provides sales and marketing functions, but not if it is required to construct and use separate facilities. We can agree to the separate subsidiary requirement if the telephone operating company is permitted to provide facilities and services to the subsidiary with those services and facilities available to others on the same terms and conditions, the telephone operating company is authorized to provide interLATA services and facilities to the affiliate and any other telecommunications provider, and there is a time or condition certain when the separate subsidiary requirement is removed.

An attachment to the August 4 letter reiterated these points.

In subsequent meetings, the Committee staff and the Task Force representatives agreed upon language implementing the RBOCs' proposed resolution of the separate subsidiary issue. See the attached letter dated August 9, 1994, to Senators Hollings and Danforth.

The Committee approved S. 1822 as amended two days later, on August 11, 1994. The RBOC-staff agreement was implemented in section 236(f) (3) (D), which provided that the separate subsidiary required by section 236 "shall be permitted to use interLATA facilities and services provided by its affiliated Bell operating company, so long as its costs are appropriately allocated and

such facilities and services are provided to its subsidiaries and other carriers on nondiscriminatory rates, terms and conditions."

Although S. 1822 was not considered by the full Senate before the end of the 103d Congress, the substance of section 236(f)(3)(D) was carried forward in the bill passed by the Senate in the 104th Congress as section 252(f)(6). Added to S. 652 on the Senate floor as part of the Managers' Amendment, section 252(f)(6) provided that a Bell operating company "may provide any interLATA or intraLATA facilities or services to its interLATA affiliate if such services or facilities are made available to all carriers at the same rates and on the same terms and conditions so long as the costs are appropriately allocated."

This provision of the Senate bill was adopted, with minor changes in wording, by the Conference Committee as new section 272(e)(4).

This history demonstrates that section 272(e)(4) was designed, at its inception, to do precisely what its plain terms state. In order to secure the support of the RBOCs for a separate affiliate requirement, Congress deliberately and expressly specified that a Bell operating company may provide any interLATA or intraLATA facilities or services to its separate interLATA affiliate so long as those facilities or services are made available to all carriers on nondiscriminatory rates, terms, and conditions, and so long as the costs are appropriately allocated.

\* \* \* \*

An original and one copy of this memorandum and the attachments hereto have been submitted to the Acting Secretary.

RECEIVED

August 4, 1994

JUN 14 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

The Honorable Ernest Hollings  
United States Senate  
Washington, D.C. 20510

The Honorable John Danforth  
United States Senate  
Washington, D.C. 20510

Dear Senators Hollings and Danforth:

The RBOCs sincerely appreciate the efforts of you and your staff to draft legislation which will permit real competition in all areas of telecommunications and video services. As you know, over the past several months we have spent many hours with the Committee staff suggesting ways in which S. 1822 can better ensure that the purposes of the legislation are realized.

In a meeting last night with the Committee staff, we discussed several important issues which should be resolved as soon as possible. There are many other important issues outstanding, including cable and regulatory reform, such as price regulation, but the immediate focus here is on long distance issues.

In our latest round of discussions, the staff requested our response to four of the key issues under review. Two questions dealt with proposals we were making and two dealt with staff proposals.

ISSUE NUMBER ONE - Separate Subsidiaries

Issue. The staff has proposed that an RBOC must offer interLATA services in a separate subsidiary.

Response. The RBOCs can agree to a separate subsidiary if that subsidiary provides sales and marketing functions, but not if it is required to construct and use separate facilities. We can agree to the separate subsidiary requirement if the telephone operating company is permitted to provide facilities and services to the subsidiary with

these services and facilities available to others on the same terms and conditions, the telephone operating company is authorized to provide interLATA services and facilities to the affiliate and any other telecommunications provider, and there is a time or condition certain when the separate subsidiary requirement is removed.

**ISSUE NUMBER TWO - Unbundling and Interconnection**

**Issue.** The staff has proposed that the RBOCs be required to meet unbundling and interconnection requirements before they can offer long distance services. The RBOCs requested that this requirement apply only to "essential" facilities.

**Response.** The RBOCs accept the staff position.

**ISSUE NUMBER THREE - Long Distance and Dialing Parity**

**Issue.** The RBOCs proposed that this legislation should require that they be given interLATA authority once a state grants a competitor 1+ dialing parity with the RBOC for intraLATA calls. The staff disagrees.

**Response.** The RBOCs agree not to press their proposal, if a solution along the lines outlined below can be agreed to.

**ISSUE NUMBER FOUR - Dialing Parity and Timing**

**Issue.** The staff has proposed in this legislation that long distance carriers be permitted to offer intraLATA services on a 1+ basis before the RBOCs are permitted to provide interLATA services.

**Response.** We agree to long distance carriers being permitted to offer intraLATA toll service on a 1+ basis simultaneously with our being permitted to offer full interLATA services. We are not requesting a head start, but we cannot agree to a legislative head start for others.

Besides these important issues, we are anxious to discuss several other issues including:

Assuring that RBOCs are able, in any permitted video service, to provide the same range of video services to our customers as are provided by other video service providers.

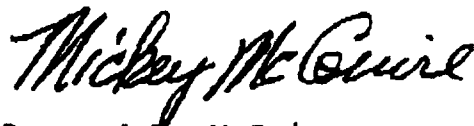
Modernizing regulation so that it focuses on the availability of universal service and on price regulation for noncompetitive services.

We regret that we are unable to give you an unqualified affirmative answer to each of the questions, but we do believe that our answers can be a solid foundation for further progress.

Thanks for your consideration of these matters.

With best regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Mickey McGuire".

Raymond L. McGuire  
Chairman, RBOC MFJ Task Force

# Certain Major Issues and Proposed Resolutions

## 1—IntraLATA Dialing Parity

### RBOC Position 8/03/94 - RBOC IV

RBOC should be authorized to provide interLATA service simultaneously with the implementation of intraLATA toll dialing parity

### Senate Staff Position 8/03/94

IntraLATA toll dialing parity should be required as soon as "technically feasible and economically reasonable" without regard to RBOC simultaneous ability to offer interLATA services and RBOC entry conditioned upon FCC determination that RBOC is in compliance with intraLATA toll dialing parity requirements

### Proposed RBOC Resolution 8/04/94

- RBOCs agree to delete from their proposal the provision specifying that if a State authorizes dialing parity the RBOC could provide interLATA services in that State
- IntraLATA toll dialing parity would occur pursuant to this legislation simultaneously with RBOC entry into interstate and intrastate interLATA telecommunications services

## 2—Essential Facilities, Functions and Services

### RBOC Position 8/03/94 - RBOC IV

The RBOCs have urged that interconnection, unbundling and nondiscriminatory access should be limited to essential facilities, services and functions, which are defined as those which a competitor needs to compete with us, are not available from others in the marketplace, and the entry seeking to use these facilities or services cannot itself reasonably duplicate them

### Senate Staff Position 8/03/94

Interconnection, access and unbundling should not be limited to essential facilities services and functions

### Proposed RBOC Resolution 8/04/94

- RBOCs accept Senate staff position



### **3—Separate InterLATA Subsidiary**

#### **RBOC Position 8/03/94 - RBOC IV**

No separate subsidiary requirement for interLATA or intraLATA toll services

#### **Senate Staff Position 8/03/94**

Separate subsidiary for interLATA services

#### **Proposed RBOC Resolution 8/04/94**

- RBOCs will agree to separate subsidiary for interLATA services with the following conditions:
  - it is a marketing and sales subsidiary
  - the subsidiary can share facilities with the Bell operating company so long as the costs are appropriately allocated
  - the Bell operating company should be authorized to provide interLATA facilities and services to the subsidiary and other carriers on nondiscriminatory terms
  - when there is a second provider of telephone exchange service in the market or area where the separate subsidiary is providing interLATA service, the separate subsidiary requirement terminates

### **4—Incidental InterLATA**

#### **RBOC Position 8/03/94 - RBOC IV**

Incidental as in House, but we would agree to codification of parts of House colloquies. We would agree to the requirement that RBOC use leased facilities for commercial mobile and retrieval of stored information, so long as LATAs were redefined for wireless purposes to be MTAs

#### **Senate Staff Position 8/03/94**

No redefinition of LATA for wireless and House provision allowing interaction by subscribers to audio and video programming should be deleted

#### **Proposed RBOC Resolution 8/04/94**

- RBOCs agree to delete their proposed redefinition of LATA
- Interactivity and remainder as in RBOC IV

## **5—Price Regulation**

### **RBOC Position 8/03/94 - RBOC IV**

States and FCC must regulate the price of services, not rate of return of carriers

### **Senate Staff Position 8/03/94**

No provision

### **Proposed RBOC Resolution 8/04/94**

RBOC position as in RBOC IV

## **6—Cable**

### **RBOC Position 8/03/94 - RBOC IV**

- Entry one year from enactment
- grandfather existing authority (e.g. U.S. West, Bell Atlantic)
- Entry in States that have removed entry barriers notwithstanding one year moratorium

### **Senate Staff Position 8/03/94**

As in S. 1822

### **Proposed RBOC Resolution 8/04/94**

RBOC position as in RBOC IV

August 9, 1994

The Honorable Ernest Hollings  
United States Senate  
Washington, D.C. 20510

The Honorable John Danforth  
United States Senate  
Washington, D.C. 20510

Dear Senators Hollings and Danforth:

The RBOCs continue to appreciate your efforts to obtain sound telecommunications legislation for our country, and we are encouraged with the progress made toward that goal over this past weekend concerning long distance issues. We are pleased that we were able to achieve agreement on language covering some of the items in my letter to you of August 4, 1994, i.e., separate subsidiaries, unbundling and interconnection and long distance and dialing parity.

While there is agreement on the long distance portion of S. 1822, we have just now seen the text of the full markup vehicle, including the sections on cable and regulatory reform. As we have indicated throughout discussions with your staffs, we will need to study the balance of the bill before we are able to pledge our collective support for its passage in Committee and on the floor. Your staffs have understood our need to reserve the right to offer amendments and/or oppose S. 1822 should that be necessary because of provisions troublesome for our businesses outside the long distance area.

We will review the markup vehicle and give you our views promptly so that we can continue our work with you to develop legislation which we can support without qualification, thus giving consumers in America the competition and lower prices they deserve.

Thanks for your consideration of these matters.

With best regards, I am

Sincerely yours,

A handwritten signature in cursive script that reads "Mickey McGuire".

R.L. Mickey McGuire  
Chairman, RBOC MFJ Task Force

## Calendar No. 610

103D CONGRESS  
2D SESSION**S. 1822**

[Report No. 103-367]

To foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1994

Mr. HOLLINGS (for himself, Mr. DANFORTH, Mr. INOUE, Mr. STEVENS; Mr. EXON, Mr. PRESSLER, Mr. ROCKEFELLER, Mr. BURNS, Mr. ROBB, Mr. GORTON, Mr. DORGAN, Mr. KERREY, Mr. KERREY, Mr. BOND, Ms. MOSELEY-BRAUN, Mr. AKAKA, Mr. LOTT, Mr. MATHEWS, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

SEPTEMBER 14 (legislative day, SEPTEMBER 12), 1994

Reported by Mr. HOLLINGS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**A BILL**

To foster the further development of the Nation's telecommunications infrastructure and protection of the public interest, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1        *able attorney's fee). The court may award under*  
2        *this section, pursuant to a motion by such per-*  
3        *son promptly made, simple interest on actual*  
4        *damages for the period beginning on the date of*  
5        *service of such person's pleading setting forth a*  
6        *claim under this title and ending on the date of*  
7        *judgment, or for any shorter period therein, if*  
8        *the court finds that the award of such interest*  
9        *for such period is just in the circumstances.*

10        *"(2) PRIVATE INJUNCTIVE RELIEF.—Any person*  
11        *shall be entitled to sue for and have injunctive relief,*  
12        *in any court of the United States having jurisdiction*  
13        *over the parties, against threatened loss or damage by*  
14        *a violation of this section, when and under the same*  
15        *conditions and principles as injunctive relief is avail-*  
16        *able under section 16 of the Clayton Act (15 U.S.C.*  
17        *26). In any action under this subsection in which the*  
18        *plaintiff substantially prevails, the court shall award*  
19        *the cost of suit, including a reasonable attorney's fee,*  
20        *to such plaintiff.*

21        *"(f) INTERLATA TELECOMMUNICATIONS SERVICE*  
22        *SAFEGUARDS.—*

23        *"(1) SEPARATE SUBSIDIARY.—Other than*  
24        *interLATA services authorized by an order entered by*  
25        *the United States District Court for the District of*

1     *Columbia pursuant to the Modification of Final*  
2     *Judgment before the date of the enactment of the*  
3     *Communications Act of 1994, a Bell operating com-*  
4     *pany providing interLATA services authorized under*  
5     *subsection (c) shall provide such interLATA services*  
6     *in that market only through a subsidiary that is sep-*  
7     *arate from any Bell operating company entity that*  
8     *provides regulated local telephone exchange service.*  
9     *The subsidiary required by this section need not be*  
10    *separate from affiliates required in sections 231, 233,*  
11    *and 613 of this Act or any other affiliate that does*  
12    *not provide regulated local telephone exchange service.*

13         “(2) **NONDISCRIMINATION SAFEGUARDS.**—*The*  
14    *Bell operating company—*

15                 “(A) *shall fulfill any requests from an unaf-*  
16                 *iliated entity for exchange access service within*  
17                 *a period no longer than that in which it provides*  
18                 *such exchange access service to itself or to its af-*  
19                 *filates;*

20                 “(B) *shall fulfill any such requests with ex-*  
21                 *change access service of a quality that meets or*  
22                 *exceeds the quality of exchange access services*  
23                 *provided by the Bell operating company or its*  
24                 *affiliates to itself or its affiliate;*

1           “(C) shall provide exchange access to all  
2 carriers at rates that are not unreasonably dis-  
3 criminatory and are based on costs and any ex-  
4 plicit subsidy;

5           “(D) shall, in any transaction with the sub-  
6 sidiary required by this section, not prefer or  
7 discriminate in favor of such subsidiary;

8           “(E) shall not provide any facilities, serv-  
9 ices, or information concerning its provision of  
10 exchange access service to the subsidiary required  
11 by this section unless such facilities, services, or  
12 information are made available to other provid-  
13 ers of interLATA services in that market on the  
14 same terms and conditions;

15           “(F) shall not enter into any joint venture  
16 or partnership with the subsidiary required by  
17 this section; and

18           “(G) shall charge the subsidiary required by  
19 this section, and impute to itself or any  
20 intraLATA toll affiliate, the same rates for ac-  
21 cess to its local exchange and exchange access  
22 services that it charges other, unaffiliated, toll  
23 carriers for such services.

24           “(3) SEPARATE SUBSIDIARY SAFEGUARDS.—The  
25 separate subsidiary required by this section—

1           “(A) shall carry out its marketing and sales  
2 directly and separate from its affiliated Bell op-  
3 erating company or any affiliates of such com-  
4 pany;

5           “(B) shall maintain books, records, and ac-  
6 counts in the manner prescribed by the Commis-  
7 sion which shall be separate from the books,  
8 records, and accounts maintained by its affli-  
9 ated Bell operating company or any affiliates of  
10 such company;

11           “(C) shall charge rates to consumers, and  
12 any intraLATA toll affiliate shall charge rates to  
13 consumers, for interLATA service and  
14 intraLATA toll service that are no less than the  
15 rates the Bell operating company charges other  
16 interLATA carriers for its local exchange and ex-  
17 change access services plus the other costs to the  
18 subsidiary of providing such services;

19           “(D) shall be permitted to use interLATA  
20 facilities and services provided by its affiliated  
21 Bell operating company, so long as its costs are  
22 appropriately allocated and such facilities and  
23 services are provided to its subsidiaries and  
24 other carriers on nondiscriminatory rates, terms  
25 and conditions;



1           “(E) shall comply with Commission regula-  
2           tions to ensure that the economic risks associated  
3           with the provision of interLATA services by such  
4           subsidiary are not borne by customers of the  
5           company's telephone exchange services; and

6           “(F) shall not obtain credit under any ar-  
7           rangement that would permit a creditor, upon  
8           default, to have recourse to the assets of the local  
9           exchange carrier.

10          “(4) TRIENNIAL AUDIT.—

11                 “(A) GENERAL REQUIREMENT.—A Bell op-  
12           erating company that engages in interLATA  
13           services shall obtain and pay for an audit every  
14           3 years conducted by an independent auditor se-  
15           lected by, and working at the direction of, the  
16           State commission of each State in which such  
17           Bell operating company provides local exchange  
18           service, to determine whether such Bell operating  
19           company has complied with this section and the  
20           regulations promulgated under this section, and  
21           particularly whether such Bell operating com-  
22           pany has complied with the separate accounting  
23           requirements under subsection (c).

24                 “(B) RESULTS SUBMITTED TO COMMISSION;  
25           STATE COMMISSIONS.—The auditor described in

104th Congress  
1st Session

SENATE

S. RPT.  
104-23

TELECOMMUNICATIONS COMPETITION  
AND DEREGULATION ACT OF 1995

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 652



MARCH 30 (legislative day, MARCH 27), 1995.—Ordered to be printed

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WASHINGTON : 1995

99-010

dustry is competitive worldwide. By reducing regulation and barriers to competition, the bill will help ensure the future growth of these industries domestically and internationally.

#### LEGISLATIVE HISTORY

During the 104th Congress, several legislative proposals were introduced to address the need for telecommunications reform. One of these bills, S. 1822, was introduced in February 1994 by Senator Hollings and Senator Danforth, Chairman and Ranking Republican Member, respectively, of the Committee on Commerce, Science and Transportation, among others. Altogether, the Committee heard 31 hours of testimony from 86 witnesses during 11 days of hearings. In open executive session on August 11, 1994, the Committee reported a substitute to S. 1822, the Communications Act of 1994, by a vote of 18-2. The measure was not considered by the full Senate before the end of the Congress.

At the beginning of the 105th Congress, on January 31, 1995, a Republican draft entitled "The Telecommunications Competition and Deregulation Act of 1995" was circulated by Senator Pressler, Chairman of the Committee on Commerce, Science and Transportation. A Democratic response entitled "The Universal Service Telecommunications Act of 1995" followed from Senator Hollings, Ranking Democratic Member of the Committee on Commerce, Science and Transportation, on February 14, 1994.

The full Committee on Commerce, Science and Transportation held 3 days of hearings.

#### JANUARY 9, 1995 HEARING

The first full committee hearing was on January 9, 1995 and dealt with telecommunications legislation in the 104th Congress.

Witnesses were the Hon. Bob Dole (R-KS), Senate Majority Leader Hon. Thomas Bliley (R-VA), Chairman, House Commerce Committee Hon. Jack Fields (R-TX), Chairman, House Commerce Committee Subcommittee on Telecommunications and Finance.

Senator Dole advocated quick passage of telecommunications legislation. He noted that rural Americans are concerned about telecommunications legislation, as it offers tremendous opportunities for economic growth. He testified that legislation should underscore competition and deregulation, not reregulation.

Chairman Bliley stated that the goals of telecommunications legislation should be to: (1) encourage a competitive marketplace; (2) not grant special government privileges; (3) return telecommunications policy to Congress; (4) create incentives for telecommunications infrastructure investment, including open competition for consumer hardware; and (5) remove regulatory barriers to competition.

Chairman Fields stated that telecommunications reform is a key component of the legislative agenda of the 104th Congress. He chastised those who speculated that Congress will be unable to pass telecommunications legislation this year. He asserted that the telecommunications industry is in a critical stage of development, and that Congress must provide guidance.